

Notice of Allowability

Application No.

10/030,529

Examiner

S. Devi, Ph.D.

Applicant(s)

ELKINS, CHRISTOPHER

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's after-final amendment filed 04/13/06.
2. ☒ The allowed claim(s) ~~is/are~~ 1, 3, 5, 8, 9, 18 and 23-25, now renumbered as claims 1, 2, 3, 4, 5, 6 and 7-9 respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

ATTACHMENT OF NOTICE OF ALLOWABILITY

Applicant's After-Final Amendment

- 1) Acknowledgment is made of Applicant's amendment filed 04/13/05 in response to the final Office Action mailed 12/14/05. With this, Applicant has amended the specification and claims.

Examiner's Amendment

- 2) An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicants, an amendment may be filed as provided by 37 C.F.R. 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. The authorization to prepare this Examiner's amendment was provided by Ms. Mary Miller in a telephonic interview on 25 April 2006.

This application has been amended as indicated below.

- (a) The limitation --(Ducreyi Serum Resistance A protein)-- is inserted after the recitation 'DsrA' at line 16 of page 3 of the specification as amended on 10/22/03.

- (b) Claims 1 and 24 have been amended as depicted below.
--Claim 1. (Currently amended). An isolated polynucleotide encoding a full length ~~ducreyi serum resistance A (DsrA) protein~~ Ducreyi Serum Resistance A protein (DsrA), the polynucleotide selected from the group consisting of:

- (a) DNA having the nucleotide sequence of SEQ ID NO: 1;
(b) a polynucleotide that hybridizes to the DNA of (a) above under stringent conditions by a wash stringency of 50% Formamide with 5x Denhardt's solution, 0.5% SDS and 1x SSPE at 42°C and which encodes a full length DrsA; and
(c) a polynucleotide that differs from the DNA of (a) ~~or (b)~~ above due to the degeneracy of the genetic code and that encodes a full length DsrA.--
--Claim 24. (Currently amended). The composition according to Claim 23 wherein the polynucleotide ~~has~~ is the DNA having the nucleotide sequence of SEQ ID NO: 1.--

Status of Claims

- 3) Claims 14-17 have been canceled via the amendment filed 04/13/06.
Claims 1, 5, 9 and 18 have been amended via the amendment filed 04/13/06.
Claims 1 and 24 have been amended via this Examiner's amendment.
Claims 1, 3, 5, 8, 9, 18 and 23-25 are pending and are under examination.

Objection(s) Withdrawn

4) The objection to claim 5 made in paragraph 15 of the Office Action mailed 08/02/05 and maintained in paragraph 8 of the Office Action mailed 12/14/05 is withdrawn in light of Applicant's amendment to the claim.

5) The objection to the specification made in paragraph 7(B) of the Office Action mailed 08/02/05 and maintained in paragraph 9 of the Office Action mailed 12/14/05 is withdrawn in light of Applicant's amendment to the specification.

Rejection(s) Moot

6) The rejection of claim 17 made in paragraph 12(j) of the Office Action mailed 08/02/05 and maintained in paragraph 40 of the Office Action mailed 12/14/05 under 35 U.S.C. § 112, second paragraph, as being indefinite, is moot in light of Applicant's cancellation of the claim.

7) The rejection of claims 14-16 made in paragraph 14 of the Office Action mailed 08/02/05 and maintained in paragraph 41 of the Office Action mailed 12/14/05 under 35 U.S.C § 102(b) as being anticipated by Skurnik *et al.* (*Mol. Microbiol.* 3: 517-529, 1989 – Applicant's IDS), is moot in light of Applicant's cancellation of the claims.

8) The rejection of claims 14-16 made in paragraph 43(e) of the Office Action mailed 12/14/05 under 35 U.S.C § 112, second paragraph, as being indefinite, is moot in light of Applicant's cancellation of the claims.

Rejection(s) Withdrawn

9) The rejection of claim 9 made in paragraph 9 of the Office Action mailed 08/02/05 and maintained in paragraph 39 of the Office Action mailed 12/14/05 under 35 U.S.C § 101 as being directed to non-statutory subject matter, is withdrawn in light of Applicant's amendment to the claim.

10) The rejection of claim 18 made in paragraph 42 of the Office Action mailed 12/14/05 under 35 U.S.C § 112, first paragraph, as containing new subject matter, is withdrawn in light of Applicant's amendment to the claim.

11) The rejection of claim 1 made in paragraphs 43(a), 43(b) and 43(c) of the Office Action mailed 12/14/05 under 35 U.S.C. § 112, second paragraph, as being indefinite, is withdrawn in light of Applicant's amendment to the claim.

12) The rejection of claim 18 made in paragraph 43(d) of the Office Action mailed 12/14/05 under 35 U.S.C § 112, second paragraph, as being indefinite, is withdrawn in light of Applicant's amendment to the claim.

13) The rejection of claims 5, 8, 9 and 23-25 made in paragraph 43(e) of the Office Action mailed 12/14/05 under 35 U.S.C § 112, second paragraph, as being indefinite, is withdrawn in light of Applicant's amendment to the base claim.

Remarks

14) Claims 1, 3, 5, 8, 9, 18 and 23-25 are allowed. Claims 3, 5, 8, 9, 18 and 23-25 are now renumbered as claims 2, 3, 4, 5, 6 and 7-9 respectively.

The full terminology provided for the abbreviation 'DsrA' in claim 1 and line 16 of page 3 of the specification does not constitute new matter, since it is the art-known full terminology for 'DsrA'. For example, see abstract B122 of Cole *et al. Abstracts of the 100th General Meeting of American Society for Microbiology*. May 21-25, 2000 (Applicant's IDS).

15) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. The Fax number for submission of amendments, responses or papers is (571) 273-8300, which receives transmissions 24 hours a day and 7 days a week.

16) Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

17) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

April, 2006


S. DEVI, PH.D.
PRIMARY EXAMINER